

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

House Engrossed
FILED
MICHELE REAGAN
SECRETARY OF STATE

CHAPTER 24
HOUSE BILL 2042

AN ACT

AMENDING SECTIONS 36-411 AND 36-425.03, ARIZONA REVISED STATUTES; RELATING
TO HEALTH CARE PERSONNEL FINGERPRINTING REQUIREMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-411, Arizona Revised Statutes, is amended to
3 read:

4 36-411. Residential care institutions; nursing care
5 institutions; home health agencies; fingerprinting
6 requirements; exemptions; definitions

7 A. ~~Subject to legislative appropriations,~~ EXCEPT AS PROVIDED IN
8 SUBSECTIONS F, G, H AND I OF THIS SECTION, as a condition of licensure or
9 continued licensure of a residential care institution, a nursing care
10 institution or a home health agency and as a condition of employment in a
11 residential care institution, a nursing care institution or a home health
12 agency, employees and owners of residential care institutions, nursing
13 care institutions or home health agencies or contracted persons OR
14 VOLUNTEERS who provide ~~direct care~~ MEDICAL SERVICES, NURSING SERVICES,
15 BEHAVIORAL HEALTH SERVICES, HEALTH-RELATED SERVICES, home health services
16 or supportive services and who have not been subject to the fingerprinting
17 requirements of a health professional's regulatory board pursuant to title
18 32 shall have valid fingerprint clearance cards that are issued pursuant
19 to title 41, chapter 12, article 3.1 or shall apply for a fingerprint
20 clearance card within twenty working days of employment or beginning
21 volunteer work ~~except as provided in subsections F, G and H of this~~
22 ~~section.~~

23 B. A health professional who has complied with the fingerprinting
24 requirements of the health professional's regulatory board as a condition
25 of licensure or certification pursuant to title 32 is not required to
26 submit an additional set of fingerprints to the department of public
27 safety pursuant to this section.

28 C. Owners shall make documented, good faith efforts to:

29 1. Contact previous employers to obtain information or
30 recommendations that may be relevant to a person's fitness to work in a
31 residential care institution, nursing care institution or home health
32 agency.

33 2. Verify the current status of a person's fingerprint clearance
34 card.

35 D. An employee, an owner, ~~or~~ a contracted person OR A VOLUNTEER or
36 a facility on behalf of the employee, the owner, ~~or~~ the contracted person
37 OR THE VOLUNTEER shall submit a completed application that is provided by
38 the department of public safety within twenty days after the date the
39 person begins work OR VOLUNTEER SERVICE.

40 E. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, a
41 residential care institution, nursing care institution or home health
42 agency shall not allow ~~a person~~ AN EMPLOYEE TO CONTINUE EMPLOYMENT or A
43 contracted person to continue to provide ~~direct care~~ MEDICAL SERVICES,
44 NURSING SERVICES, BEHAVIORAL HEALTH SERVICES, HEALTH-RELATED SERVICES,
45 home health services or supportive services if the person has been denied

1 a fingerprint clearance card pursuant to title 41, chapter 12, article
2 3.1, OR has been denied approval pursuant to this section before May 7,
3 2001 ~~or has not received an interim approval from the board of~~
4 ~~fingerprinting pursuant to section 41-619.55, subsection F.~~

5 ~~F. Volunteers who provide services to residents under the direct~~
6 ~~visual supervision of a previously screened owner or employee are exempt~~
7 ~~from the fingerprint clearance card requirements of this section.~~

8 F. AN EMPLOYEE OR CONTRACTOR WHO IS ELIGIBLE PURSUANT TO SECTION
9 41-1758.07, SUBSECTION C TO PETITION THE BOARD OF FINGERPRINTING FOR A
10 GOOD CAUSE EXCEPTION AND WHO PROVIDES DOCUMENTATION OF HAVING APPLIED FOR
11 A GOOD CAUSE EXCEPTION PURSUANT TO SECTION 41-619.55 BUT WHO HAS NOT YET
12 RECEIVED A DECISION IS EXEMPT FROM THE FINGERPRINTING REQUIREMENTS OF THIS
13 SECTION IF THE PERSON PROVIDES SERVICES TO RESIDENTS OR PATIENTS WHILE
14 UNDER THE DIRECT VISUAL SUPERVISION OF AN OWNER OR EMPLOYEE WHO HAS A
15 VALID FINGERPRINT CLEARANCE CARD.

16 G. A RESIDENTIAL CARE INSTITUTION, NURSING CARE INSTITUTION OR HOME
17 HEALTH AGENCY SHALL REQUIRE THAT AN OWNER OR EMPLOYEE WHO HAS A VALID
18 FINGERPRINT CLEARANCE CARD PROVIDE DIRECT VISUAL SUPERVISION OF A
19 VOLUNTEER WHO PROVIDES SERVICES TO RESIDENTS OR PATIENTS UNLESS THE
20 VOLUNTEER HAS A VALID FINGERPRINT CLEARANCE CARD.

21 ~~H. Notwithstanding the requirements of section 41-1758.02,~~
22 ~~subsection B, a person who provides direct care, home health services or~~
23 ~~supportive services for AN EMPLOYEE OF a residential care institution,~~
24 ~~home health agency or nursing care institution, after meeting the~~
25 ~~fingerprinting and criminal records check requirements of this section, is~~
26 ~~not required to meet the fingerprint and criminal records check~~
27 ~~requirements of this section again if that person remains employed by the~~
28 ~~same employer or changes employment within two years after satisfying the~~
29 ~~requirements of this section. For the purposes of this subsection, if the~~
30 ~~employer changes through sale, lease or operation of law, a person is~~
31 ~~deemed to be employed by the same employer if that person remains employed~~
32 ~~by the new employer.~~

33 ~~H. I. Notwithstanding the requirements of section 41-1758.02,~~
34 ~~subsection B, a person who has received approval pursuant to this section~~
35 ~~before May 7, 2001 and who remains employed by the same employer is not~~
36 ~~required to apply for a fingerprint clearance card.~~

37 ~~I. J. If a person's employment record contains a six-month or~~
38 ~~longer time frame where DURING WHICH the person was not employed by any~~
39 ~~employer, a completed application with a new set of fingerprints shall be~~
40 ~~submitted to the department of public safety.~~

41 ~~I. K. For the purposes of this section:~~

42 1. "DIRECT VISUAL SUPERVISION" MEANS CONTINUOUS VISUAL OVERSIGHT OF
43 THE SUPERVISED PERSON THAT DOES NOT REQUIRE THE SUPERVISOR TO BE IN A
44 SUPERIOR ORGANIZATIONAL ROLE TO THE PERSON BEING SUPERVISED.

1 ~~1.~~ 2. "Home health services" has the same meaning prescribed in
2 section 36-151.

3 ~~2.~~ 3. "Supportive services" has the same meaning prescribed in
4 section 36-151.

5 Sec. 2. Section 36-425.03, Arizona Revised Statutes, is amended to
6 read:

7 36-425.03. Children's behavioral health programs; personnel;
8 fingerprinting requirements; exemptions;
9 definitions

10 A. Except as provided in subsections B, ~~and~~ C AND D of this
11 section, children's behavioral health program personnel, including
12 volunteers, shall submit the form prescribed in subsection ~~D~~ E of this
13 section to the employer and shall have a valid fingerprint clearance card
14 issued pursuant to title 41, chapter 12, article 3.1 or, within seven
15 working days after employment or beginning volunteer work, shall apply for
16 a fingerprint clearance card.

17 B. THE FOLLOWING PERSONS ARE EXEMPT FROM THE FINGERPRINTING
18 REQUIREMENTS OF THIS SECTION:

19 1. WHEN UNDER THE DIRECT VISUAL SUPERVISION AND IN THE PRESENCE OF
20 CHILDREN'S BEHAVIORAL HEALTH PROGRAM PERSONNEL WHO HAVE A VALID
21 FINGERPRINT CLEARANCE CARD:

22 (a) EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, parents,
23 foster parents, KINSHIP FOSTER CARE PARENTS and guardians who participate
24 in GROUP activities ~~with THAT INCLUDE their children under the supervision~~
25 ~~of and in the presence of~~ WHO ARE RECEIVING BEHAVIORAL HEALTH SERVICES
26 FROM A children's behavioral health program ~~personnel are exempt from the~~
27 ~~fingerprinting requirements of subsection A of this section if the parents~~
28 THEY are not employees of the children's behavioral health program.

29 (b) A VOLUNTEER WHO PROVIDES SERVICES TO CHILDREN RECEIVING
30 BEHAVIORAL HEALTH SERVICES.

31 (c) AN EMPLOYEE OR CONTRACTOR WHO IS ELIGIBLE PURSUANT TO SECTION
32 41-1758.07, SUBSECTION C TO PETITION THE BOARD OF FINGERPRINTING FOR A
33 GOOD CAUSE EXCEPTION AND WHO PROVIDES DOCUMENTATION OF HAVING APPLIED FOR
34 A GOOD CAUSE EXCEPTION PURSUANT TO SECTION 41-619.55 BUT WHO HAS NOT YET
35 RECEIVED A DECISION.

36 (d) A PERSON WHO IS NOT PROVIDING MEDICAL SERVICES, NURSING
37 SERVICES, BEHAVIORAL HEALTH SERVICES, HEALTH-RELATED SERVICES, HOME HEALTH
38 SERVICES OR SUPPORTIVE SERVICES AND WHO IS EITHER NOT AN EMPLOYEE OR
39 CONTRACTOR OR NOT ON THE PREMISES ON A REGULAR BASIS.

40 2. HOSPITAL MEDICAL STAFF MEMBERS, EMPLOYEES, CONTRACTORS AND
41 VOLUNTEERS WHO ARE NOT PRESENT IN AN AREA OF THE HOSPITAL AUTHORIZED BY
42 THE DEPARTMENT FOR PROVIDING CHILDREN'S BEHAVIORAL HEALTH SERVICES.

43 C. A PARENT, FOSTER PARENT, KINSHIP FOSTER CARE PARENT OR GUARDIAN
44 OF A CHILD WHO IS RECEIVING BEHAVIORAL HEALTH SERVICES FROM A CHILDREN'S
45 BEHAVIORAL HEALTH PROGRAM IS NOT REQUIRED TO BE FINGERPRINTED OR

1 SUPERVISED FOR PURPOSES OF THIS SECTION IF THE PERSON IS IN THE PRESENCE
2 OF OR PARTICIPATING WITH ONLY THE PERSON'S OWN CHILD.

3 ~~C.~~ D. Applicants and employees who are fingerprinted pursuant to
4 section 15-512 or 15-534 are exempt from the fingerprinting requirements
5 of subsection A of this section.

6 ~~D.~~ E. Children's behavioral health program personnel shall certify
7 on forms that are provided by the department and notarized that they are
8 not awaiting trial on or have never been convicted of or admitted in open
9 court or pursuant to a plea agreement to committing any of the offenses
10 listed in section 41-1758.03, subsection B or C in this state or similar
11 offenses in another state or jurisdiction.

12 ~~E.~~ F. Forms submitted pursuant to subsection ~~D~~ E of this section
13 are confidential.

14 ~~F.~~ G. Employers of children's behavioral health program personnel
15 shall make documented, good faith efforts to contact previous employers of
16 children's behavioral health program personnel to obtain information or
17 recommendations that may be relevant to an individual's fitness for
18 employment in a children's behavioral health program.

19 ~~G.~~ H. A person who is awaiting trial on or who has been convicted
20 of or who has admitted in open court or pursuant to a plea agreement to
21 committing a criminal offense listed in section 41-1758.03, subsection B
22 is prohibited from working in any capacity in a children's behavioral
23 health program that requires or allows contact with children.

24 ~~H.~~ I. A person who is awaiting trial on or who has been convicted
25 of or who has admitted in open court or pursuant to a plea agreement to
26 committing a criminal offense listed in section 41-1758.03, subsection C
27 shall not work in a children's behavioral health program in any capacity
28 that requires or allows the employee to provide direct services to
29 children unless the person has applied for and received the required
30 fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

31 ~~I.~~ J. The department of health services shall accept a
32 certification submitted by a United States military base or a federally
33 recognized Indian tribe that either:

34 1. Personnel who are employed or who will be employed and who
35 provide services directly to children have not been convicted of, have not
36 admitted committing or are not awaiting trial on any offense prescribed in
37 subsection ~~G~~ H of this section.

38 2. Personnel who are employed or who will be employed to provide
39 services directly to children have been convicted of, have admitted
40 committing or are awaiting trial on any offense prescribed in subsection
41 ~~H~~ I of this section if the personnel provide these services while under
42 direct visual supervision.

43 ~~J.~~ K. The employer shall notify the department of public safety if
44 the employer receives credible evidence that a person who possesses a
45 valid fingerprint clearance card either:

1 1. Is arrested for or charged with an offense listed in section
2 41-1758.03, subsection B.

3 2. Falsified information on the form required by subsection ~~D~~ E of
4 this section.

5 ~~K~~ L. For the purposes of this section:

6 1. "Children's behavioral health program" means a program that
7 ~~provides children's behavioral health services and that is licensed by the~~
8 ~~department as a behavioral health service agency or that contracts with~~
9 PROVIDED IN A HEALTH CARE INSTITUTION THAT IS LICENSED BY the department
10 to provide children's behavioral health services.

11 2. "Children's behavioral health program personnel" means an owner,
12 employee or volunteer who works at a children's behavioral health program.

13 3. "DIRECT VISUAL SUPERVISION" MEANS CONTINUOUS VISUAL OVERSIGHT OF
14 THE SUPERVISED PERSON THAT DOES NOT REQUIRE THE SUPERVISOR TO BE IN A
15 SUPERIOR ORGANIZATIONAL ROLE TO THE PERSON BEING SUPERVISED.

APPROVED BY THE GOVERNOR MARCH 21, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 21, 2017.

Passed the House February 1, 2017

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

[Signature]
Speaker of the House

☐ Pro Tempore

[Signature]
Chief Clerk of the House

Passed the Senate March 14, 2017

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

15th day of March, 2017

at 4:02 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 21st day of

March, 2017

at 10:11 o'clock A M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 21 day of March, 2017

at 4:51 o'clock P M.

[Signature]
Secretary of State

H.B. 2042